

HOUSE BILL No. 4943

June 15, 2005, Introduced by Reps. Hopgood, Vagnozzi, Plakas, Polidori, Byrum, Kehrl and Alma Smith and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 299, entitled
"Occupational code,"
by amending section 303a (MCL 339.303a), as amended by 1995 PA
183, and by adding article 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 303a. The terms provided for in this act shall commence
2 on the following dates:

3	Accountancy	July 1
4	Architects	April 1
5	Athletic board of control	April 1
6	AUCTIONEERS	JANUARY 1
7	Barbers	October 1
8	Collection agencies	July 1

1	Community planners	July 1
2	Cosmetology	January 1
3	Employment agencies	October 1
4	Foresters	April 1
5	Hearing aid dealers	October 1
6	Land surveyors	April 1
7	Landscape architects	July 1
8	Marriage counselors	October 1
9	Mortuary science	July 1
10	Nursing home administrators	January 1
11	Professional engineers	April 1
12	Real estate appraisers	July 1
13	Real estate brokers and salespersons	July 1
14	Residential builders	April 1
15	Social workers	October 1

16 **ARTICLE 28**

17 **SEC. 2801. AS USED IN THIS ARTICLE:**

18 (A) "AUCTION" MEANS THE SALE OR OFFER FOR SALE BY BIDDING OF
19 REAL OR PERSONAL PROPERTY AT A PUBLIC OR PRIVATE LOCATION.

20 (B) "AUCTIONEER" MEANS AN INDIVIDUAL WHO, FOR COMPENSATION,
21 IS ENGAGED IN THE BUSINESS OF THE CONDUCT OF OR OFFERS TO ENGAGE
22 IN THE CONDUCT OF AN AUCTION.

23 (C) "DEPOSITORY" MEANS A STATE OR NATIONALLY CHARTERED BANK
24 OR STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION,
25 SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS ARE INSURED BY AN
26 AGENCY OF THE UNITED STATES GOVERNMENT UNDER THE LAWS OF THIS
27 STATE OR THE UNITED STATES.

28 **SEC. 2803. THERE IS CREATED A BOARD OF AUCTIONEERS.**

1 SEC. 2805. (1) A PERSON SHALL NOT USE THE TITLE "REGISTERED
2 AUCTIONEER" UNLESS REGISTERED UNDER THIS ARTICLE.

3 (2) A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY,
4 ASSOCIATION, OR OTHER LEGAL ENTITY MAY APPLY FOR REGISTRATION
5 UNDER THIS ARTICLE IF NOT LESS THAN 1 OF ITS OFFICERS, PARTNERS,
6 MEMBERS, OR MANAGING AGENTS IS DESIGNATED AS A QUALIFYING MEMBER.
7 THE DEPARTMENT SHALL ISSUE A REGISTRATION TO THE QUALIFYING
8 MEMBER UPON THAT INDIVIDUAL'S FULFILLMENT OF THE REQUIREMENTS OF
9 THIS ARTICLE. THE QUALIFYING MEMBER IS RESPONSIBLE FOR EXERCISING
10 THE SUPERVISION AND CONTROL OF THE ACTIVITIES REGULATED BY THIS
11 ARTICLE TO ASSURE FULL COMPLIANCE WITH THIS ARTICLE AND ANY RULES
12 THAT MAY BE PROMULGATED UNDER THIS ARTICLE.

13 (3) THE DEPARTMENT SHALL SUSPEND, REVOKE, OR DENY THE
14 REGISTRATION OF A CORPORATION, PARTNERSHIP, LIMITED LIABILITY
15 COMPANY, ASSOCIATION, OR OTHER LEGAL ENTITY WHEN THE REGISTRATION
16 OF THE QUALIFYING MEMBER IS SUSPENDED, REVOKED, OR DENIED.

17 (4) IF THE QUALIFYING MEMBER OF A REGISTRANT STOPS BEING ITS
18 QUALIFYING MEMBER, SUCH CIRCUMSTANCE OPERATES AS AN AUTOMATIC
19 SUSPENSION OF THE ENTITY'S REGISTRATION. UPON REQUEST, THE
20 DEPARTMENT MAY PERMIT THE REGISTRATION TO REMAIN IN FORCE FOR A
21 REASONABLE PERIOD OF TIME IN ORDER TO ALLOW THE QUALIFYING OF A
22 NEW QUALIFYING MEMBER.

23 (5) A PERSON SHALL NOT ADVERTISE OR USE THE TERM "REGISTERED
24 AUCTIONEER" OR ANY OTHER TERM OF SIMILAR MEANING THAT CONNOTES
25 THAT THE PERSON IS REGISTERED UNDER THIS ARTICLE UNLESS THAT
26 PERSON OBTAINS A REGISTRATION UNDER THIS ARTICLE.

27 SEC. 2807. THE FOLLOWING PERSONS ARE EXEMPT FROM THIS

1 ARTICLE:

2 (A) A DEALER OR BROKER LICENSED UNDER 1937 PA 284, MCL
3 287.121 TO 287.131, SELLING BY AUCTION LIVESTOCK AND WHO DOES NOT
4 USE THE TERM "REGISTERED AUCTIONEER" UNLESS REGISTERED UNDER THIS
5 ARTICLE.

6 (B) A DEALER LICENSED UNDER THE MICHIGAN VEHICLE CODE, 1949
7 PA 300, MCL 257.1 TO 257.923, SELLING BY AUCTION MOTOR VEHICLES
8 AND WHO DOES NOT USE THE TERM "REGISTERED AUCTIONEER" UNLESS
9 REGISTERED UNDER THIS ARTICLE.

10 (C) A DEALER OR MANUFACTURER SELLING BY AUCTION BOATS OR
11 WATERCRAFT REQUIRED TO HAVE A CERTIFICATE OF TITLE UNDER PART 801
12 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994
13 PA 451, MCL 324.80101 TO 324.80199, AND WHO DOES NOT USE THE TERM
14 "REGISTERED AUCTIONEER" UNLESS REGISTERED UNDER THIS ARTICLE.

15 SEC. 2809. EXCEPT AS OTHERWISE PROVIDED IN SECTION 2819, THE
16 DEPARTMENT SHALL ISSUE A REGISTRATION AS A REGISTERED AUCTIONEER
17 TO AN INDIVIDUAL OR TO THE QUALIFYING OFFICER OF A LEGAL ENTITY
18 WHO MEETS ALL OF THE FOLLOWING CONDITIONS:

19 (A) HAS EITHER 2 YEARS OF APPRENTICE EXPERIENCE WITH A
20 REGISTERED AUCTIONEER OR PROOF OF GRADUATION FROM AN ACCREDITED
21 AUCTION SCHOOL ACCEPTABLE TO THE BOARD AND 1 YEAR OF APPRENTICE
22 EXPERIENCE WITH A REGISTERED AUCTIONEER. UNDER BOTH
23 CIRCUMSTANCES, THE INDIVIDUAL SHALL HAVE ACTIVELY PARTICIPATED IN
24 THE CONDUCT OF NOT LESS THAN 10 AUCTIONS. THE EXPERIENCE SHALL BE
25 VERIFIED BY AN AFFIDAVIT OF A REGISTERED AUCTIONEER AND SHALL
26 PROVIDE THE NAMES AND ADDRESSES OF THE PARTIES ON WHOSE BEHALF
27 THE AUCTION WAS HELD AND THE DATES OF THE AUCTION.

1 (B) HAS COMPLETED AN EXAMINATION AS DESCRIBED IN SECTION
2 2815.

3 (C) IS OF GOOD MORAL CHARACTER.

4 SEC. 2811. MONEY PAID BY ANY PERSON IN CONNECTION WITH AN
5 AUCTION TO A REGISTRANT UNDER THIS ARTICLE IS CONSIDERED TO BE
6 HELD IN TRUST FOR THE BENEFIT OF THE PERSON MAKING THE PAYMENT
7 AND THE REGISTRANT IS CONSIDERED THE TRUSTEE FOR THE MONEY.

8 SEC. 2813. (1) A REGISTERED AUCTIONEER SHALL MAINTAIN A
9 REGULAR PLACE OF BUSINESS IN THIS STATE. IF MORE THAN 1 PLACE OF
10 BUSINESS IS MAINTAINED, THE DEPARTMENT SHALL ISSUE A DUPLICATE
11 REGISTRATION AT NO ADDITIONAL COST. A REGULAR PLACE OF BUSINESS
12 DOES NOT INCLUDE A LOCATION USED ONLY AS A WAREHOUSE.

13 (2) A REGISTERED AUCTIONEER SHALL NOT CONDUCT AN AUCTION
14 UNLESS A WRITTEN CONTRACT IS EXECUTED BETWEEN THE PERSON DESIRING
15 AUCTION SERVICES AND THE REGISTERED AUCTIONEER. A REGISTRANT
16 SHALL KEEP A COPY OF THE CONTRACT AS PART OF HIS OR HER RECORDS
17 AND, UPON REQUEST, MAKE THEM AVAILABLE TO THE DEPARTMENT FOR
18 INSPECTION DURING NORMAL BUSINESS HOURS.

19 (3) A REGISTRANT UNDER THIS ARTICLE SHALL MAINTAIN WRITTEN
20 RECORDS OF EACH AUCTION SALE FOR A PERIOD OF NOT LESS THAN 3
21 YEARS FROM THE DATE OF THE AUCTION SALE. THE RECORDS SHALL
22 INCLUDE, BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

23 (A) CONSIGNMENT RECEIPTS.

24 (B) BIDDER REGISTRATIONS.

25 (C) DOCUMENTS RELATING TO FINAL SETTLEMENTS WITH CONSIGNORS.

26 (4) A REGISTRANT UNDER THIS ARTICLE SHALL MAINTAIN RECORDS
27 ON ALL CURRENT EMPLOYEES AND ON PAST EMPLOYEES FOR NOT LESS THAN

1 3 YEARS AFTER A PAST EMPLOYEE LEAVES THE EMPLOYMENT OF THE
2 REGISTRANT. THE RECORDS SHALL INCLUDE THE EMPLOYEE'S NAME,
3 ADDRESS, SOCIAL SECURITY NUMBER, AND DATE OF BIRTH.

4 (5) A REGISTRANT UNDER THIS ARTICLE SHALL CONSPICUOUSLY POST
5 AT THE REGULAR PLACE OF BUSINESS A COPY OF THE REGISTRATION
6 ISSUED UNDER THIS ARTICLE.

7 (6) A REGISTRANT UNDER THIS ARTICLE SHALL ESTABLISH A
8 CUSTODIAL ACCOUNT IN THE MANNER DESCRIBED IN THIS SECTION. THE
9 REGISTRANT SHALL DEPOSIT INTO THE CUSTODIAL ACCOUNT ALL CHECKS,
10 DRAFTS, NEGOTIABLE INSTRUMENTS, AND CASH TENDERED BY A BUYER FOR
11 THE PAYMENT OF AN ITEM SOLD BY AUCTION. THE REGISTRANT SHALL MAKE
12 A DISBURSEMENT RELATIVE TO A SALE BY AUCTION THROUGH THAT
13 CUSTODIAL ACCOUNT IN THE TIME PERIOD AND MANNER DESCRIBED IN THIS
14 SECTION.

15 (7) A REGISTRANT SHALL NOT PERMIT AN ADVANCE PAYMENT OF
16 MONEY BY A CUSTOMER TO BE DEPOSITED IN THE REGISTRANT'S BUSINESS
17 OR PERSONAL ACCOUNT OR TO BE COMMINGLED IN ANY WAY WITH FUNDS
18 BELONGING TO THE REGISTRANT, EXCEPT AS PROVIDED IN THIS SECTION.
19 THE REGISTRANT SHALL DEPOSIT CUSTOMER MONEY INTO A SEPARATE
20 CUSTODIAL ACCOUNT UNTIL THE TRANSACTION INVOLVED IS CONSUMMATED
21 OR TERMINATED, WITHIN 2 BANKING DAYS AFTER THE AUCTION
22 TRANSACTION BUT NOT LATER THAN 5 DAYS AFTER ITS RECEIPT.

23 (8) THE SEPARATE CUSTODIAL ACCOUNT IS SUBJECT TO THE
24 FOLLOWING REQUIREMENTS:

25 (A) SHALL BE AN INTEREST BEARING ACCOUNT MAINTAINED IN A
26 DEPOSITORY RECOGNIZED BY THE DEPARTMENT.

27 (B) SHALL DESIGNATE THE REGISTRANT AS THE CUSTODIAN OR

1 TRUSTEE.

2 (C) SHALL PROVIDE FOR WITHDRAWAL OF MONEY WITHOUT PREVIOUS
3 NOTICE AND SHALL NOT BE ENCUMBERED IN ANY MANNER.

4 (D) SHALL NOT CONTAIN ANY MONEY OF THE REGISTRANT EXCEPT FOR
5 AN AMOUNT SUFFICIENT TO PAY SERVICE CHARGES ON THE ACCOUNT OR TO
6 MAINTAIN THE ACCOUNT WHEN CUSTOMER MONEY IS NOT ON DEPOSIT.

7 (9) DISBURSEMENTS FROM THE SEPARATE CUSTODIAL ACCOUNT SHALL
8 BE MADE ONLY FOR THE FOLLOWING PURPOSES:

9 (A) PAYMENT AS A RESULT OF THE SALE OF AN ITEM BY THE
10 REGISTRANT PURSUANT TO THE CONTRACT.

11 (B) REFUND OF AN AMOUNT TO THE CUSTOMER UPON TERMINATION OF
12 THE TRANSACTION.

13 (C) PAYMENT TO THE REGISTRANT OF A COMMISSION AND DOCUMENTED
14 AND APPROVED EXPENSES FOLLOWING THE CONSUMMATION OF A TRANSACTION
15 UPON WHICH A COMMISSION IS PAYABLE TO THE REGISTRANT.

16 (10) THE REGISTRANT SHALL KEEP RECORDS OF MONEY DEPOSITED IN
17 THE SEPARATE CUSTODIAL ACCOUNT. THE RECORDS SHALL SHOW ALL OF THE
18 FOLLOWING:

19 (A) THE DATE OF THE RECEIPT OF MONEY FROM A CUSTOMER AND THE
20 NAME OF THE CUSTOMER ON WHOSE BEHALF THE MONEY WAS PAID.

21 (B) THE PURPOSE FOR WHICH THE MONEY WAS PAID.

22 (C) THE DATE THE MONEY WAS DEPOSITED IN THE CUSTODIAL
23 ACCOUNT.

24 (D) THE DATE OF WITHDRAWAL OF THE MONEY, THE PURPOSE OF THE
25 WITHDRAWAL, AND THE NAME OF THE PERSON TO WHOM THE MONEY WAS PAID
26 UPON WITHDRAWAL.

27 (E) ANY OTHER PERTINENT INFORMATION REGARDING THE

1 TRANSACTION.

2 (11) THE DEPARTMENT AND THE BOARD MAY, UPON NOTICE GIVEN TO
3 A REGISTRANT, INSPECT THE RECORDS REQUIRED TO BE KEPT PURSUANT TO
4 THIS SECTION.

5 SEC. 2815. (1) THE DEPARTMENT AND THE BOARD SHALL DEVELOP AN
6 EXAMINATION FOR APPLICANTS FOR REGISTRATION UNDER THIS ARTICLE IN
7 THE MANNER PROVIDED FOR IN SECTION 316.

8 (2) THE EXAMINATION DESCRIBED IN SUBSECTION (1) SHALL
9 INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBJECT MATTER
10 AREAS:

11 (A) THE PROVISIONS OF THIS ARTICLE.

12 (B) ETHICS AND ETHICAL PRACTICES AS THEY RELATE TO THE
13 BUSINESS OF CONDUCTING AUCTIONS.

14 (C) ELEMENTARY MATHEMATICS.

15 (D) ELEMENTARY PRINCIPLES OF REAL ESTATE AND PERSONAL
16 PROPERTY ECONOMICS.

17 (E) ELEMENTARY PRINCIPLES OF THE LAW REGARDING BULK SALES,
18 DEEDS, MORTGAGES, CONTRACTS OF SALE, AGENCY, LEASES, AUCTIONS,
19 AND BROKERAGE.

20 (3) THE DEPARTMENT SHALL ADMINISTER THE EXAMINATIONS ON AT
21 LEAST A QUARTERLY BASIS. THE DEPARTMENT MAY ADMINISTER THE
22 EXAMINATIONS MORE OFTEN THAN ON A QUARTERLY BASIS IF THE BOARD
23 DETERMINES THAT CIRCUMSTANCES EXIST THAT WARRANT THE FURTHER
24 ADMINISTRATION OF THE EXAMINATION.

25 SEC. 2817. (1) THE DEPARTMENT SHALL ISSUE A REGISTRATION
26 WITHOUT EXAMINATION TO A NONRESIDENT INDIVIDUAL WHO, AT THE TIME
27 OF APPLICATION, IS LICENSED, REGISTERED, CERTIFIED, OR OTHERWISE

1 REGULATED BY ANOTHER STATE IF THE REQUIREMENTS OF THAT STATE, AS
2 DETERMINED BY THE BOARD, ARE SUBSTANTIALLY THE EQUIVALENT OF THE
3 REQUIREMENTS OF THIS ARTICLE AND IF THE OTHER STATE OFFERS
4 LICENSURE, CERTIFICATION, OR REGISTRATION ON A RECIPROCAL BASIS
5 SIMILAR TO THIS SECTION TO REGISTRANTS UNDER THIS ARTICLE.

6 (2) A NONRESIDENT SHALL FILE AN IRREVOCABLE CONSENT TO
7 SERVICE OF PROCESS, SIGNED BY THE REGISTRANT. A PROCESS OR
8 PLEADING SERVED UPON THE DEPARTMENT SHALL BE SUFFICIENT SERVICE
9 UPON THE REGISTRANT. A PROCESS OR PLEADING SERVED UPON THE
10 DEPARTMENT UNDER THIS SECTION SHALL BE IN DUPLICATE. THE
11 DEPARTMENT SHALL IMMEDIATELY SERVE BY FIRST-CLASS MAIL A COPY OF
12 THE PROCESS OR PLEADING TO THE REGISTRANT'S LAST KNOWN ADDRESS AS
13 DETERMINED BY THE RECORDS OF THE DEPARTMENT.

14 SEC. 2819. (1) NOTWITHSTANDING SECTION 2809, THE DEPARTMENT
15 SHALL REGISTER AS AN AUCTIONEER, AFTER VERIFICATION OF THE
16 EXPERIENCE REQUIREMENTS IMPOSED IN THIS SECTION, AN INDIVIDUAL
17 WHO APPLIES NOT MORE THAN 2 YEARS AFTER THE EFFECTIVE DATE OF
18 THIS ARTICLE AND SUBMITS AN AFFIDAVIT ATTESTING TO EXPERIENCE IN
19 THE CONDUCT OF AUCTIONS FOR NOT LESS THAN 3 YEARS BEFORE THE
20 EFFECTIVE DATE OF THIS ARTICLE.

21 (2) THE DEPARTMENT SHALL ISSUE A REGISTRATION UNDER THIS
22 SECTION ONLY IF THE APPLICANT'S EXPERIENCE INCLUDES CONDUCTING 12
23 OR MORE AUCTIONS.

24 SEC. 2821. A REGISTRANT WHO COMMITS ANY OF THE FOLLOWING
25 ACTS IS SUBJECT TO THE SANCTIONS AND PENALTIES CONTAINED IN
26 ARTICLE 6:

27 (A) FAILS TO ENTER INTO A WRITTEN CONTRACT WITH A SELLER OR

1 CONSIGNOR BEFORE PLACING OR AUTHORIZING ANY ADVERTISING FOR AN
2 AUCTION.

3 (B) FAILS TO REDUCE TO WRITING OR FAILS TO ISSUE ANY
4 APPROPRIATE DOCUMENTATION RELATIVE TO AN AUCTION-RELATED
5 TRANSACTION.

6 (C) FAILS TO APPROPRIATELY USE OR ISSUE PAYMENT FROM A
7 CUSTODIAL FUND.

8 (D) IS INVOLVED IN CAPPING, SHILLING, OR STEERING RELATIVE
9 TO AN AUCTION.

10 (E) FAILS TO DISCLOSE HIS OR HER REGISTRATION NUMBER ON ALL
11 ADVERTISING.

12 (F) KNOWINGLY MISREPRESENTS THE NATURE OR VALUE OF AN ITEM
13 BEING AUCTIONED.

14 (G) VIOLATES THE REQUIREMENTS OF THIS ARTICLE OR A RULE
15 PROMULGATED UNDER THIS ARTICLE.

16 Enacting section 1. This amendatory act does not take
17 effect unless Senate Bill No.____ or House Bill No. 4944(request
18 no. 01057'05 a **) of the 93rd Legislature is enacted into law.